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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/718,348

11/21/2003

John C. Simmons

9883

7590  
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09/14/2007

EXAMINER

MALAMUD, DEBORAH LESLIE

ART UNIT

PAPER NUMBER

3766

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DELIVERY MODE

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PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

<b>Office Action Summary</b>	Application No. 10/718,348	Applicant(s) SIMMONS, JOHN C.	
	Examiner Deborah Malamud	Art Unit 3766	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 25 July 2007.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-34 is/are pending in the application.
- 4a) Of the above claim(s) 7-9, 11, 12, 17, 20, 24-27 and 30-34 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6, 10, 13-16, 18, 19, 21-23, 28 and 29 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 November 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date <u>11/21/03</u> . | 6) <input type="checkbox"/> Other: _____  |

**DETAILED ACTION**

***Election/Restrictions***

1. Claims 30-34 withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected invention; claims 7-9, 11-12, 17, 20 and 24-27 are withdrawn from further consideration pursuant to 37 CFR 1.142(b), as being drawn to a nonelected species, there being no allowable generic or linking claim. Applicant timely traversed the restriction (election) requirement in the reply filed on 25 July 2007. The traversal is on the grounds that "these elements [of the claims in each of the groups] are specifically designed for each other as the specification illustrates in detail and thus do no have 'materially different intended uses and constructions.'" This is not found persuasive because, though the specification is considered by the examiner, the restriction between groups was made solely on the basis of the claimed elements. As claimed, the inventions of the restricted groups were distinct for the reasons given by the examiner in the previous Restriction Requirement.
2. The traversal is also on the grounds that (page 2, "Remarks") "III" as described in the specification, is an embodiment comparable to the basic elements of I (w/much identical claim text) modified for special training applications and including additive software that would not work without some of the elements of I. Neither could #I do training as described in the claim 31 without elements of III. Also, "III" is not a training protocol and the phrase "positive and negative reinforcement" was placed in the "whereby" portion of the claim illustrating a well-known procedure applicable to but in no way restricting the current invention." The examiner respectfully disagrees that this is in

no way limiting to the invention. Restriction between inventions is made by considering each claim element, and had the applicant elected group III for prosecution, it would have been necessary for the examiner to search for art that taught elements such as "positive and negative reinforcement."

3. The examiner would like to note that invention II, described previously by the examiner as a "restraining device," is better defined as a device for securing equipment to a bird. The word "restraining" was intended to be used in the sense that the equipment is restrained to the bird to which it is secured. The examiner appreciates the applicant pointing this out, and adds that restriction is still proper since the basis for it was that it is limited to avian use, rather than to use of any other kind of living being.

4. Regarding the traversal for the species restriction, the essence of the applicant's arguments appears to be that dividing the invention into different species creates a hardship for the applicant in receiving adequate protection for the claimed invention. The examiner reminds the applicant that should the generic claim (claim 1) be found allowable, rejoinder of the species claim will be considered at that time. In the meantime, for purposes of prosecution, different embodiments of the claimed system will be prosecuted separately, as explained in the previous Restriction Requirement.

5. The requirement is still deemed proper and is therefore made FINAL.

### ***Claim Rejections - 35 USC § 112***

6. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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7. Claim 15 is rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. Claim 15 recites the limitation "a second sensor means" in line 2 of the claim. Since there is no mention in claims 15, or in claim 1, on which it depends, of a first sensor means, there is insufficient antecedent basis for this limitation in the claim.

***Claim Rejections - 35 USC § 102***

8. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

9. Claims 1-6, 13-14, 18 and 28 are rejected under 35 U.S.C. 102(b) as being anticipated by Knierim (U.S. 7,764,111). Regarding claims 1, 4-5 and 18, Knierim discloses (col. 1, lines 55-68; Figure 1) "an orthodontic reminder and enforcer apparatus is provided for an orthodontic headgear. The headgear includes a conventional head strap with a modified face bow. The bow extends about the face and into the patient's mouth where it is attached to the teeth, and a magnet is preferably mounted on the front center of the bow. A mouthpiece is configured to fit within the mouth of the patient and is usually placed behind the front teeth. The mouthpiece includes a magnetic switch sealed within it and, when the face bow is in proper position on the teeth, the magnet on the face bow will be sufficiently close to actuate the magnetic switch in the mouthpiece."

During a use period for the headpiece (col. 2, lines 7-28) "the logic circuit will generate an electric alarm signal if the magnetic switch is not actuated by the magnet. If the magnetic switch is actuated, the logic circuit interprets this condition as a detection signal indicating the presence of the magnet and the face bow, and it will cease generating the electric alarm signal. During the dormant period, the patient is not required to wear the headgear so the logic circuit will not generate the electric alarm signal regardless of whether the magnetic switch is actuated. An alarm, preferably a beeper, is mounted within the mouthpiece and generates a beep inside the patient's mouth in response to the electric alarm signal. During the use period when the magnetic switch is not actuated, the beeper will continue to beep for a sufficiently long time to irritate the patient and force him to wear the headgear. In other words, in order to turn off the beeper inside his mouth, the patient must wear the headgear. The beeping sound inside the patient's mouth is intended to be sufficiently irritating and, perhaps, embarrassing [sic], to cause the patient to prefer wearing the headgear over hearing a beeper inside his mouth." The examiner considers this to be stimulation means placed in a formation conducive to providing stimulations perceptible to the brain as a discernable point whose positions may be perceived in some spatial frame or reference relatable to an actual environment with the stimulators being physically located on a part of the body (the mouth) with adequate sensitivity to the stimulations; a behavior controller means operatively connected to the stimulations means for directing stimulations. The behavior controller means direct an action with instructions that include directions whose intent will be recognized intuitively due to graphically perceived

points which are related in the mind to desired actions or spatial locations in the current environment. Knierim further discloses, (col. 4, lines 64-67) "Both the beeper speaker (32) and the logic circuit (28) are powered by a battery (30) which is also encapsulated within the mouthpiece (12)." The examiner considers this to be a power means for the provision of power where needed to the controller means.

10. Regarding claims 2-3, the examiner considers the magnetic communication between the mouthpiece (12) and the orthodontic headgear to be a communication means for communicating between the behavior controller and an external entity (the headgear), wherein the communication means is a practical wireless means of data communication.

11. Regarding claim 6, the examiner considers the beeping alarm of Knierim to indicate a direction of the headgear relative to the user's head or mouth.

12. Regarding claim 13, the examiner considers the mouth piece (12) of Knierim to be arrayed in a roughly semi-circular area.

13. Regarding claim 14, the examiner considers the magnet sensor disclosed by Knierim to be a first sensor means operatively connected to behavior controller means for sensing the direction of the body, whereby the behavior controller means can monitor and automatically respond to any instruction not followed.

14. Regarding claim 28, the examiner considers the termination of the alarm beeping sound to be a positive reinforcement component, for encouraging the positive behavior of wearing an orthodontic device.

15. Claims 1, 10, 19 and 21-23 are rejected under 35 U.S.C. 102(b) as being anticipated by Levine (U.S. 6,334,073). Regarding claims 1, 19 and 21, Levine discloses (col. 11, lines 52-67) an "electrical stimulator (27) will activate the stimulating electrode (30) for a predetermined period of time when the command (20) from the central processor (4) is received and demodulated by the internal radio receiver (19) and is determined by the behavior control unit (25), preferably by the microprocessor (28), to be meant for the subject by examining the unique human identification code that encoded the command. The central processor will issue an activating command when its monitoring system determines the subject is out-of-bounds as described above in the first embodiment, or is using an unauthorized substance as described above in the second embodiment, and will periodically continue to reissue an activating command until the subject returns to his authorized area. The stimulator will also provide an adverse reaction each time an unauthorized substance is used, with the objective being to discourage the subject from using such substances. The stimulation voltage can be increased if the subject continues to violate the imposed restrictions, or is decreased upon compliance." The examiner considers this to be stimulation means placed in a formation conducive to providing stimulations perceptible to the brain as a discernable point whose positions may be perceived in some spatial frame or reference relatable to an actual environment with the stimulators being physically located on a part of the body with adequate sensitivity to the stimulations; a behavior controller means operatively connected to the stimulations means for directing stimulations. The behavior controller means direct an action with instructions that include directions whose intent will be



recognized intuitively due to graphically perceived points which are related in the mind to desired actions or spatial locations in the current environment.

16. Regarding claim 10, the system of Levine discloses a series of points indicating by the stimulation means that create the perception of a line that indicate a distance to be achieved, since a user of Levine's system will be confined to a limited physical space due to electrical stimulation.

17. Regarding claim 22, Levine discloses (col. 8, lines 15-20) "the locations of each of the external radio receivers (3) must be accurately known by the central processor for precise location determination of the subjects. This can be accomplished, for example, by traditional surveying or by using the Global Positioning System." The examiner considers this to be GPS means operatively connected through data transmission means to remote control means.

18. Regarding claim 23, Levine discloses (col. 8, lines 40-43) "if necessary, the external radio receivers can be protected from vandalism or deliberate destruction by closed circuit television cameras capable of scanning the surrounding area and sending video back to the central processor." The examiner considers this to be video image capture means operatively connected to remote control means through data transmission means for capturing the image from a perspective of the body.

19. Claims 1, 15-16 and 28-29 are rejected under 35 U.S.C. 102(b) as being anticipated by Watson et al (U.S. 6,273,027). Regarding claims 1, 15-16 and 28, Watson discloses (col. 10, lines 59-67; col. 11, lines 1-22; Figure 5) a training device

comprising a "a collar (54) which is adapted to be worn by the animal. The collar defines the reservoir (14), which is adapted to contain an aerosol containing a scent appealing to the animal to be released in the form of a spray. A filling valve (not shown) is connected with the reservoir, for receiving a canister (56) containing a supply of the aerosol, to fill the reservoir with the aerosol." A microphone (26) is "connected to the PCB (printed circuit board; 28), for detecting the undesired behavior. The signal generator (27) is connected to the PCB (24), for generating RM signals, and the speaker (28) is connected to the PCB (28), for emitting RM (response marker) signals when an undesired behavior such as barking and the like is detected. The PCB (24) has programmed an interval of time. In operation, upon detection of an inappropriate barking through the microphone, the PCB (24) sends a RM signal through the speaker for the animal to hear, the solenoid valve (58) remains inactivated and closed such that no reward is provided to the animal, and the interval of time is reset to zero. If the animal does not bark during the full interval of time, the PCB (24) activates the solenoid valve (58), which opens to release from the reservoir a dose of aerosol containing the scent which is pleasing to the animal. The device also comprises a manual override for a direct remote control of rewards, RM and RAM signals dispensing, for optional teaching when the caretaker is present." The examiner considers this to be stimulation means placed in a formation conducive to providing stimulations perceptible to the brain as a discernable point whose positions may be perceived in some spatial frame or reference relatable to an actual environment with the stimulators being physically located on a part of the body with adequate sensitivity to the stimulations; a behavior

controller means operatively connected to the stimulations means for directing stimulations. The behavior controller means direct an action with instructions that include directions whose intent will be recognized intuitively due to graphically perceived points which are related in the mind to desired actions or spatial locations in the current environment. The examiner further considers the microphone to be a sensor means operatively connected to behavior controller means for sensing sounds. It is to be noted that, being located on the collar of the animal, the sensor will be proximate to the mouth.

20. Regarding claims 28-29, the examiner considers the system of Watson to provide positive reinforcement to the animal being trained. It is to be noted that the nose is capable of sensing the presence of pheromones, which sexually stimulate a living being. An animal such as a dog is especially attuned to scents, such as pheromones or other pleasurable odors. Therefore, the examiner considers Watson's system to provide positive stimulations to an erogenous zone.

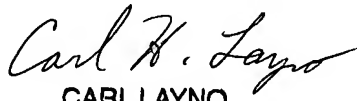
### ***Conclusion***

21. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Deborah Malamud whose telephone number is (571) 272-2106. The examiner can normally be reached on Monday-Friday, 9.00am-5.30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Angela D. Sykes can be reached on (571) 272-4955. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
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Patent Examiner  
Art Unit 3766